

APPEAL NO. 041445
FILED AUGUST 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 1, 2004. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that the appellant (carrier) is not relieved of liability under Section 409.002 because of the claimant's failure to timely notify the employer pursuant to Section 409.001; and that the claimant had disability from October 28, 2003, through the date of the hearing. The carrier appealed the above-determinations on sufficiency of the evidence grounds. The claimant responded, urging affirmance.

DECISION

Affirmed.

The claimant testified that he sustained a compensable injury on _____, when the wheelbarrow he was holding onto tipped over; that the wheelbarrow contained cement; and that he felt a pop in his low back. Three supervisory employees of the employer testified that they witnessed the incident and that the claimant appeared to be in pain immediately afterward. The claimant had the burden to prove that he sustained a compensable injury. Conflicting evidence was presented on this disputed issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's compensability determination is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Section 409.001(a) provides that an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the injury occurs. Section 409.002 provides that failure to notify an employer as required by Section 409.001(a) relieves the employer and the employer's insurance carrier of liability unless the employer or the carrier has actual knowledge of the employee's injury, the Texas Workers' Compensation Commission determines that good cause exists for failure to provide notice in a timely manner, or the employer or the carrier does not contest the claim. Whether or not the claimant had good cause for failing to timely report the injury to his employer, and whether the carrier is relieved from liability because it did not receive timely notice of the injury, were also issues for the hearing officer to resolve. Conflicting evidence was presented regarding when the claimant knew he had sustained a new injury, and that he should report it as such. The claimant officially reported the injury to his employer on October 27, 2003. The hearing officer found that the claimant had good cause for not

timely reporting the injury to his employer. The hearing officer's determination regarding good cause and timely notice are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The hearing officer's decision on the disability issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, supra.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Daniel R. Barry
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica L. Ruberto
Appeals Judge